

## **BILL ANALYSIS**

C.S.S.B. 660  
By: Hinojosa  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Water Development Board (the “Board”) was created in 1957 through a state constitutional amendment that authorized the Board to issue general obligation water development bonds to provide financial assistance to political subdivisions. To address the State’s water needs, the Board performs three major functions: provides loans and grants through state and federal programs to Texas communities for water and wastewater projects, supports the development of regional water plans and prepares the State Water Plan, and collects, analyzes, and disseminates water-related data. The bill does not address continuation of the agency because the Board is not subject to abolishment under the Sunset Act. As a result of its review of the Board, the Sunset Advisory Commission recommended several statutory modifications that are contained in this legislation.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 10 and SECTION 21 of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 5, SECTION 10, SECTION 17 and SECTION 21 of this bill.

Rulemaking authority is expressly granted to the State Office of Administrative Hearings in SECTION 17 of this bill.

### **ANALYSIS**

SECTION 1. Amends Section 6.013, Water Code, as follows:

Sec. 6.013. SUNSET PROVISION. Provides that the Texas Water Development Board (the “Board”) is subject to review under Chapter 325 (Texas Sunset Act), Government Code, but is not abolished under that chapter. Requires the Board to be reviewed during the period in which state agencies abolished in 2023, rather than 2011, and every 12th year after 2023, rather than 2011, are reviewed.

SECTION 2. Amends Subchapter D, Chapter 6, Water Code, by adding Sections 6.113, 6.114, and 6.115, as follows:

Sec. 6.113. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the Board to develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of Board rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction.

(b) Requires that the Board's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires the Board to coordinate the implementation of the policy adopted under Subsection (a), provide training as needed to implement the procedures for negotiated

rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures.

Sec. 6.114. FINANCIAL ASSISTANCE PROGRAMS: DEFAULT, REMEDIES, AND ENFORCEMENT. (a) Defines "Default" to mean a default in payment of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board; a failure to perform any covenant related to a bond, security, or other obligation purchased or acquired by the board; a failure to perform any of the terms of a loan, grant, or other financing agreement; or any other failure to perform an obligation, breach of a term of an agreement, or default as provided by any proceeding or agreement evidencing an obligation or agreement of a recipient, beneficiary, or guarantor of financial assistance provided by the board. Defines "Financial assistance program recipient" to mean a recipient or beneficiary of funds administered by the board under this code, including a borrower, grantee, guarantor, or other beneficiary.

(b) In the event of a default and on request by the board, requires the attorney general to seek:

- (1) a writ of mandamus to compel a financial assistance program recipient or the financial assistance program recipient's officers, agents, and employees to cure the default; and
- (2) any other legal or equitable remedy the board and the attorney general consider necessary and appropriate.

(c) Provides that a proceeding authorized by this section shall be brought and venue is in a district court in Travis County.

(d) Authorizes the attorney general, in a proceeding under this section, to recover reasonable attorney's fees, investigative costs, and court costs incurred on behalf of the state in the proceeding in the same manner as provided by general law for a private litigant.

Sec. 6.115. RECEIVERSHIP. (a) Defines "financial assistance program recipient" as having the meaning assigned by Section 6.114.

(b) Requires the attorney general, at the request of the board, to bring suit in a district court in Travis County, in addition to the remedies available under Section 6.114, for the appointment of a receiver to collect the assets and carry on the business of a financial assistance program recipient if:

- (1) the action is necessary to cure a default by the recipient; and
- (2) the recipient is not:
  - (A) a municipality or county; or
  - (B) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(c) Requires the court to vest a receiver appointed by the court with any power or duty the court finds necessary to cure the default, including the power or duty to:

- (1) perform audits;
- (2) raise wholesale or retail water or sewer rates or other fees;
- (3) fund reserve accounts;
- (4) make payments of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board; and
- (5) take any other action necessary to prevent or to remedy the default.

(d) Requires the receiver to execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties.

(e) After appointment and execution of bond, requires the receiver to take possession of the books, records, accounts, and assets of the financial assistance program recipient specified by the court. Requires the receiver to perform the duties that the court directs and to strictly observe the final order involved until discharged by the court.

(f) Allows the court to dissolve the receivership on a showing of good cause by the financial assistance program recipient.

SECTION 3. Amends Section 6.154, Water Code, as follows:

Sec. 6.154. COMPLAINT FILE. (a) Requires the Board to maintain a system to promptly and efficiently act on complaints filed with the Board, rather than requires the Board to maintain a file on each written complaint filed with the Board. Requires the Board to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

Deletes existing text requiring that the file include the name of the person who filed the complaint, the date the complaint is received by the Board, the name of each person contacted in relation to the complaint, and an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint. Makes nonsubstantive changes.

(b) Requires the Board to make information available describing its procedures for complaint investigation and resolution, rather than requires the Board to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the Board's policies and procedures relating to complaint investigation and resolution.

SECTION 4. Amends Section 6.155, Water Code, to require the Board to periodically notify the complaint parties of the status of the complaint until final disposition, rather than requires the Board, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

SECTION 5. Amends Section 11.1271, Water Code, by amending Subsection (f) and adding Subsection (g), as follows:

(f) Adds language to an existing requirement for the Texas Commission on Environmental Quality (TCEQ) to adopt rules to require the uniform water use calculation system developed under Section 16.403 to be used in the water conservation plans required by this section.

(g) Requires that, at a minimum, rules adopted under the added provision to require an entity to report the most detailed level of municipal water use data currently available to the entity. Prohibits TCEQ from adopting a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 6. Amends Section 16.021, Water Code, by amending Subsections (c), (d), and (e) and adding Subsections (d-1) and (g), as follows:

(c) Requires the executive administrator of the Board (executive administrator) to designate the director of the Texas Natural Resources Information System (TNRIS) to serve as the state geographic information officer. Requires the state geographic information officer to:

- (1) coordinate the acquisition and use of high-priority imagery and data sets;
- (2) establish, support, and disseminate authoritative statewide geographic data sets;
- (3) support geographic data needs of emergency management responders during emergencies;
- (4) monitor trends in geographic information technology; and
- (5) support public access to state geographic data and resources.

Deletes existing text creating the Texas Geographic Information Council (TGIC) to provide strategic planning and coordination in the acquisition and use of geo-spatial data and related technologies in the State of Texas. Deletes existing text requiring the executive administrator and the executive director of the Department of Information Resources (DIR) to designate entities to be members of TGIC. Deletes existing text requiring the chief administrative officer of each member entity to select one representative to serve on the TGIC. Deletes existing text requiring that the duties of TGIC include providing guidance to the executive administrator in carrying out the executive administrator's duties under this section and guidance to DIR for development of rules related to statewide geo-spatial data and technology standards.

(d) Requires the Board, not later than December 1, 2016, and before the end of each successive five-year period after that date, to submit to the governor, lieutenant governor, and speaker of the house of representatives a report that contains recommendations regarding:

- (1) statewide geographic data acquisition needs and priorities, including updates on progress in maintaining the statewide digital base maps described by Subsection (e)(6) (requiring the executive administrator to coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features);
- (2) policy initiatives to address the acquisition, use, storage, and sharing of geographic data across the state;
- (3) funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and
- (4) opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data.

Deletes existing text requiring member entities of TGIC that are state agencies, and authorizing member entities that are not state agencies, to provide information to TGIC about their investments in geographic information and plans for its use. Deletes existing text requiring TGIC, not later than November 1 of each even-numbered year, to prepare and provide to the Board, DIR, the governor, and the legislature a report that describes the progress made by each TGIC member entity toward achieving geographic information system goals and in implementing geographic information systems initiatives and recommends additional initiatives to improve the state's geographic information systems programs.

(d-1) Requires the Board to consult with stakeholders in preparing the report required by Subsection (d).

(e) Deletes a reference to the executive administrator's existing duties as being "under the guidance of TGIC".

(g) Authorizes the Board to establish one or more advisory committees to assist the Board or the executive administrator in implementing this section, including by providing information in connection with the preparation of the report required by Subsection (d). Requires the Board, in appointing members to an advisory committee, to consider including representatives of: state agencies that are major users of geographic data, federal agencies, local governments, and DIR.

SECTION 7. Amends Section 16.023(b), Water Code, as follows:

(b) Removes a reference to "a state agency that is a member of the Texas Geographic Information Council" from existing law for determining the use of funds for administering TNRIS.

SECTION 8. Amends Section 16.051, Water Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Requires that the state water plan include:

- (1) an evaluation of the state's progress in meeting future water needs, including an evaluation of the extent to which water management strategies and projects implemented after the adoption of the preceding state water plan have affected that progress; and
- (2) an analysis of the number of projects included in the preceding state water plan that received financial assistance from the Board.

(a-2) Authorizes the Board, to assist the Board in evaluating the state's progress in meeting future water needs, to obtain implementation data from the regional water planning groups.

SECTION 9. Amends Sections 16.053(c) and (e), Water Code, as follows:

(c) Requires the groundwater conservation districts located in each management area, as defined by Section 36.001 (Definitions), located in the regional water planning area to appoint one representative of a groundwater conservation district located in the

management area and in the regional water planning area to serve on the regional water planning group.

(e) Requires each regional water planning group to submit to the Board a regional water plan that meets certain conditions, including that it is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the date the Board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan.

SECTION 10. Amends Section 16.402, Water Code, by amending Subsection (e) and adding Subsection (f), as follows:

(e) Adds language to an existing requirement for the Board and TCEQ jointly to adopt rules to require the uniform water use calculation system developed under Section 16.403 to be used in the reports required by Subsection (b) and makes nonsubstantive changes.

(f) Requires that rules adopted under the added provision, at a minimum, require an entity to report the most detailed level of municipal water use data currently available to the entity. Prohibits the Board and TCEQ from adopting a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 11. Amends Subchapter K, Chapter 16, Water Code, by adding Section 16.403, as follows:

Sec. 16.403. UNIFORM WATER USE CALCULATION SYSTEM. Requires the Board and TCEQ, in consultation with the Water Conservation Advisory Council, to develop a uniform system for calculating municipal water use in gallons per capita per day to be used by each entity required to submit a water conservation plan to the Board or TCEQ under this code.

SECTION 12. Amends Section 17.003, Water Code, by adding Subsections (c), (d), (e), and (f), as follows:

(c) Provides that water financial assistance bonds that have been authorized but have not been issued are not considered to be state debt payable from the general revenue fund for purposes of Section 49-j, Article III, Texas Constitution, until the legislature makes an appropriation from the general revenue fund to the board to pay the debt service on the bonds.

(d) Requires the executive administrator, in requesting approval for the issuance of bonds under this chapter, to certify to the bond review board whether the bonds are reasonably expected to be paid from:

(1) the general revenues of the state; or

(2) revenue sources other than the general revenues of the state.

(e) Requires the bond review board to verify whether debt service on bonds to be issued by the board under this chapter is state debt payable from the general revenues of the state, in accordance with the findings made by the board in the resolution authorizing the issuance of the bonds and the certification provided by the executive administrator under Subsection (d).

(f) Provides that bonds issued under this chapter that are designed to be paid from the general revenues of the state shall cease to be considered bonds payable from those revenues if:

(1) the bonds are backed by insurance or another form of guarantee that ensures payment from a source other than the general revenues of the state; or

(2) the board demonstrates to the satisfaction of the bond review board that the bonds no longer require payment from the general revenues of the state and the bond review board so certifies to the Legislative Budget Board.

SECTION 13. Amends section 17.9022, Water Code, as follows:

Sec. 17.9022. FINANCING OF GRANT OR LOAN FOR POLITICAL SUBDIVISION; DEFAULT; VENUE. Deletes existing subsection (b) requiring the attorney general to seek a writ of mandamus or other legal remedy to compel the political subdivision or its officers, agents, and employees to cure a default by performing the duties they are legally

obligated to perform in the event of a default in payment of the principal of or interest on bonds or securities purchased by the board, or any other default as defined in the proceedings or indentures authorizing the issuance of bonds, or a default of any of the terms of a loan agreement. Deletes text specifying the venue for such proceedings is in a district court in Travis County. Deletes text specifying this subsection is cumulative of any other rights or remedies to which the board may be entitled.

Makes nonsubstantive changes.

SECTION 14. Amends Section 36.001, Water Code, by adding Subsection (30) as follows:

Subsection (30) Defines "desired future condition" to mean a quantitative description, adopted in accordance with the bill's provisions, of the desired condition of the groundwater resources in a management area at one or more specified future times.

SECTION 15. Amends Section 36.063, Water Code, by amending (a) and adding (b) and (c) as follows:

Sec. 36.063. NOTICE OF MEETINGS. (a) Requires notice of meetings of the board, except as provided by Subsections (b) and (c), to be given as set forth in the Open Meetings Act, Chapter 551, Government Code.

(b) Provides that at least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the board must post notice that includes:

- (1) the proposed desired future conditions and a list of any other agenda items;
- (2) the date, time, and location of the meeting or hearing;
- (3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
- (4) the names of the other districts in the district's management area; and
- (5) information on how the public may submit comments.

(c) Requires notice of a hearing described by Subsection (b), except as provided by Subsection (b), to be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).

SECTION 16. Amends Sections 36.1071 (a) and (e) as follows:

(a) Changes one of the management goals to be addressed in developing a comprehensive management plan by specifying such a goal as addressing the desired future conditions adopted by the district under provisions relating to joint planning in a management area, rather than as addressing in a quantitative manner the desired future conditions of the groundwater resources.

(e) Provides that the management plan, in addition to other listed estimates, include an estimate of managed available groundwater in the district based on the desired future condition "adopted", rather than "established", under Section 36.108.

SECTION 17. Amends Subchapter D, Chapter 36, Water Code, by amending Section 36.108 and adding Sections 36.1081 through 36.1087 as follows:

Sec. 36.108 JOINT PLANNING IN MANAGEMENT AREA. (a) Defines "Development board" to mean the Texas Water Development Board. Defines "District representative" to mean the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area.

(c) Requires that the district representatives, newly defined as the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area, meet at least annually to conduct joint planning with the other districts in the management area and adds the review of proposals to adopt new or amend existing desired future conditions, to other existing duties.

(d) Requires the districts to propose for adoption, rather than establish, desired future conditions for the relevant aquifers within the management area. Requires the districts to make several considerations before voting on the proposed, rather than doing so in establishing, desired future conditions of the aquifers. Establishes such considerations as the following:

1. aquifer uses or conditions, rather than uses or conditions of an aquifer, within the management area, including conditions that differ substantially from one geographic area to another;
2. the water supply needs and water management strategies included in the state water plan;
3. hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator of the TWDB, and the average annual recharge, inflows, and discharge;
4. other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
5. the impact on subsidence;
6. socioeconomic impacts reasonably expected to occur;
7. the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under provisions relating to the ownership of groundwater;
8. whether the desired future conditions are physically possible; and
9. any other information relevant to the specific desired future conditions.

(d-1) Redesignates this subsection by providing circumstances for which a district may establish different desired future conditions.

(d-2) Requires the proposed, rather than established, desired future conditions to provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. Specifies that these provisions do not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals relating to a management plan. Requires the proposed desired future conditions to be approved, rather than adopted, by a two-thirds vote of all the district representatives for distribution to the districts in the management area.

Specifies that a period of not less than 30 or more than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. Requires each district, during the public comment period and after posting required notice, to hold a public hearing on the proposed desired future conditions relevant to that district. Requires the district, during the public comment period, to make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of considered factors and groundwater availability model run results. Requires the district, after the public hearing, to compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

Removes language regarding the voting meeting of district representatives as a meeting at which at least two-thirds of the districts located in whole or in part in the management area have a voting representative in attendance, and for which all districts located in whole or in part in the management area provide public notice in accordance with state open meetings law.

Deletes a provision that each district in the management area must ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process to relocate it to Section 36.1086.

(d-3) Requires the district representatives, after the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period, to reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. Requires the desired future conditions to be adopted as a resolution by a two-thirds vote of all the district representatives. Requires the district representatives to produce a desired future conditions explanatory report for the management area and submit to the TWDB and each district in the management area

proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. Requires the report to identify each desired future condition; provide the policy and technical justifications for each desired future condition; include documentation that specified factors were considered by the districts and a discussion of how the adopted desired future conditions impact each factor; list other desired future condition options considered, if any, and the reasons why those options were not adopted; and discuss reasons why recommendations made by advisory committees and public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) Requires a district, as soon as possible after the district receives the desired future conditions resolution and explanatory report, to adopt the desired future conditions in the resolution and report that apply to the district.

(e) Provides an exception from the requirement for holding a joint meeting in accordance with the Open Meetings Act. Authorizes the district representatives to elect one district to be responsible for providing the notice of a joint meeting that applicable provisions would otherwise require of each district in the management area. Removes a provision requiring notice of a joint meeting to be given in accordance with the requirements for notice of district board of directors meetings under the state's Public Information Act. Requires notice of a joint meeting to be provided at least 10 days before the date of the meeting by providing notice to the secretary of state, providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area, and posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.

(e-1) Requires the secretary of state and the county clerk of each such county to post notice of the meeting in the manner provided by provisions relating to notice of a governing body of a water district or other district or political subdivision that extends into four or more counties.

(e-2) Provides that notice of a joint meeting must include the date, time, and location of the meeting; a summary of any action proposed to be taken; the name of each district located wholly or partly in the management area; and the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.

(e-3) Establishes that the failure or refusal of one or more districts to post notice for a joint meeting at a place readily accessible to the public at the district office of each district located wholly or partly in the management area does not invalidate an action taken at the joint meeting.

Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT PLANNING. (a) Requires TCEQ and the Board, on request, to make technical staff available to serve in a nonvoting advisory capacity to assist with the development of desired future conditions during the joint planning process.

(b) Authorizes the district representatives, during such process, to appoint and convene nonvoting advisory subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions.

Sec. 36.1082. PETITION FOR INQUIRY. Defines "affected person," with respect to a management area, to mean an owner of land in the management area; a district in or adjacent to the management area; a regional water planning group with a water management strategy in the management area; a person who holds or is applying for a permit from a district in the management area; a person who has a certain ownership interest in groundwater in the management area; or any other person defined as affected by TCEQ rule. Makes conforming changes.

Revises the reasons for which an affected person is authorized to file a petition with TCEQ requesting an inquiry to include the following:

1. a district fails to submit its management plan to the executive administrator of the TWDB;
2. a district fails to participate in the joint planning process, rather than refusing to join the process;
3. a district fails to adopt rules;



4. a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
5. a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
6. a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;
7. the rules adopted by a district are not designed to achieve the desired future conditions adopted by the management area rather than the condition of groundwater resources the management area established during the joint planning process;
8. the groundwater in the management area is not adequately protected by the rules adopted by a district; or
9. the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

Makes conforming changes to the process currently in statute by which the TCEQ must review the petition.

Sec. 36.1083. ADMINISTRATIVE APPEAL OF DESIRED FUTURE CONDITIONS.

(a) Defines "Affected person" to have the meaning assigned by Section 36.1082; "Development board" to mean the Texas Water Development Board; and "Office" to mean the State Office of Administrative Hearings (SOAH).

(b) Authorizes an affected person, not later than the 180th day after the date on which a district adopted a desired future condition, to file a petition with the district requesting that the district contract with SOAH to conduct a hearing to appeal the desired future condition, including the reasonableness of the desired future condition.

(c) Requires the district, not later than the 45th day after receiving a request under Subsection (b), to contract with the office; request a contested case hearing; and submit a copy of the petition to the office.

(d) Requires the hearing to be held at the district office or regular meeting location of the district's board of directors, unless the board provides for hearings to be held at a different location, and to be conducted in accordance with the Administrative Procedure Act and rules of SOAH.

(e) Authorizes the district to adopt rules for notice and hearings conducted under the bill's provisions relating to an administrative appeal of desired future conditions that are consistent with the procedural rules of SOAH. Provides that, in the manner prescribed by district and office rules, the district shall provide general notice of the hearing and individual notice of the hearing to the petitioner, any other party in the hearing in Subsection (f)(3), each nonparty district and regional water planning group in the management area, the development board, and the commission. Authorizes only an affected person to participate as a party in the hearing.

(f) Requires the office to hold a prehearing conference to determine preliminary matters including:

- (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
- (2) whether a person is an affected person and eligible to participate as a party in the hearing; and
- (3) naming parties to the hearing.

(g) Requires the petitioner to pay all costs associated with the contract for the hearing and to deposit with the district an amount sufficient to pay the contract amount before the hearing begins. Requires the district, at the conclusion of the hearing, to refund any excess money to the petitioner.

(h) Authorizes the administrative law judge to request a study from the development board if the judge finds that a technical analysis is needed related to the hydrogeology of the area or matters within the development board's expertise. Requires the development board, in conducting the technical analysis, to consider any relevant information provided

in the petition, as well as any groundwater availability models, published studies, or other information the development board considers relevant. Requires the study to be completed and delivered to the office not later than the 120th day after the date of the request for admission into the evidentiary record for consideration at the hearing. Requires the development board to make available the relevant staff as expert witnesses during the hearing if requested by any party or the administrative law judge.

(i) Requires the district's board, on receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, to issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. Authorizes the board to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an order issued by the administrative law judge in the same manner as a state agency under certain Administrative Procedure Act provisions. Requires the districts in the management area, if the district in its final order finds that a desired future condition is unreasonable, to reconvene in a joint planning meeting not later than the 30th day after the date of the final order to revise the desired future condition.

(j) Establishes that a district's final order finding that a desired future condition is unreasonable does not invalidate the desired future condition for a district not subject to the petition.

Sec. 36.1084. COURT APPEAL OF DESIRED FUTURE CONDITION. Authorizes a final district order to be appealed under the substantial evidence standard of review as provided by certain provisions of the Administrative Procedure Act. Provides that the venue for an appeal is a district court with jurisdiction over any part of the territory in the management area that includes the district whose final order is being appealed. Requires the court, if the court finds that a desired future condition is unreasonable, to strike the desired future condition and order the districts in the management area to reconvene in a joint planning meeting not later than the 30th day after the date of the court's decision to revise the desired future condition.

Sec. 36.1085. MANAGED AVAILABLE GROUNDWATER. Removes a provision authorizing a person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area to file a petition with the TWDB appealing the approval of the desired future conditions of the established groundwater resources. Removes provisions related to the Board's petition process, including requirements of the petition, Board review and hearings related to the petition, and processes associated with district revision of desired future conditions if the Board finds the conditions require revising. Requires the TWDB to require the districts in a management area to submit the following to the executive administrator not later than the 60th day after the date on which the districts adopted desired future conditions as provided by the bill: the adopted desired future conditions, proof that notice was posted for the joint planning meeting, and the desired future conditions explanatory report. Provides that the executive administrator must provide each district and regional water planning group located wholly or partly in the management area with the managed available groundwater in the management area based upon the desired future conditions adopted by the district, rather than the condition of the groundwater resources established under this section. Makes nonsubstantive changes.

Sec. 36.1086. MANAGEMENT PLAN GOALS AND OBJECTIVES. Provides that each district in the management area must ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process, relocated from the former section 36.108(d-2).

Sec. 36.1087. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA. Redesignates the former section 36.108(p). Makes conforming changes. Strikes the term "groundwater" before management areas.

SECTION 18. COMMISSION ACTION REGARDING DISTRICT DUTIES. Amends Section 36.3011, Water Code, as follows:

Sec. 36.3011. Adds to or modifies the list of findings upon which TCEQ to take any action against a district to include any of the following:

- a district fails to submit its management plan to the executive administrator of the TWDB;
- a district fails to participate in the joint planning process;
- a district fails to adopt rules;
- a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
- a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
- a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;
- the rules adopted by a district are not designed to achieve the desired future conditions adopted by the management area during the joint planning process;
- the groundwater in the management area is not adequately protected by the rules adopted by a district; or
- the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

Makes nonsubstantive changes.

SECTION 19. Repeals sections 15.908 and 17.180, Water Code.

SECTION 20. Requires groundwater conservation districts, as soon as practicable after the effective date of this Act, to appoint initial representatives to regional water planning groups as required by Section 16.053(c), Water Code, as amended by this Act.

SECTION 21. (1) Requires TCEQ, not later than January 1, 2013, to adopt rules under Section 11.1271(f), Water Code, as amended by this Act;

(2) Requires the Board and TCEQ jointly, not later than January 1, 2013, to adopt rules under Section 16.402(e), Water Code, as amended by this Act; and

(3) Requires the Board and TCEQ, not later than January 1, 2013, in consultation with the Water Conservation Advisory Council, to develop the water use calculation system required by Section 16.403, Water Code, as added by this Act.

SECTION 22. Provides that the notice provisions of Sections 36.063(b) and (c), Water Code, as added by this Act, apply only to a meeting or hearing of a groundwater conservation district or a joint planning meeting of groundwater conservation districts held on or after the effective date of this Act. Provides that a meeting or hearing held before the effective date of this Act is subject to the notice provisions in effect at the time of the meeting or hearing, and those provisions are continued in effect for that purpose.

SECTION 23. Provides that the requirement that a groundwater conservation district's management plan under Section 36.1071(e), Water Code, as amended by this Act, include the desired future conditions adopted under Section 36.108, Water Code, as amended by this Act, for submission to the executive administrator before the plan is considered administratively complete applies only to a district management plan submitted to the executive administrator on or after the effective date of this Act. Provides that a management plan submitted before the effective date of this Act is governed by the law in effect on the date the plan was submitted, and that law is continued in effect for that purpose.

SECTION 24. Provides that the procedures for the adoption and reporting of desired future conditions of groundwater resources in a management area under Section 36.108, Water Code, as amended by this Act, and 36.1085, Water Code, as added by this Act, apply only to the adoption of desired future conditions that occurs on or after the effective date of this Act. Provides that desired future conditions adopted before the effective date of this Act are governed by the law in effect on the date the desired future conditions were adopted, and that law is continued in effect for that purpose.

SECTION 25. Requires that a petition filed and pending on the effective date of this Act before the Board to appeal the adoption of desired future conditions by a groundwater management area under former Section 36.108(l), Water Code, be handled by the Board in compliance with

Sections 36.108(l), (m), and (n), Water Code, as those sections existed before the effective date of this Act.

SECTION 26. Provides for the effective date of this Act.

### **EFFECTIVE DATE**

This Act takes effect September 1, 2011.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.S.B. 660 removes a requirement in the original bill that notice provisions apply to any meeting or hearing at which the board will consider or take public comments on a desired future condition and adds language applying notice provisions to a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4). The substitute moves language specifying where notice must be posted from sec. 36.063(c) in the original bill to 36.108(e) and changes the locations from in the district office; in the county courthouse of each county located wholly or partly in the district; with the secretary of state; and on the district's Internet website, if the district has an Internet website, to instead providing notice to the secretary of state; providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area. The substitute has a provision not in the original bill that, except as provided under subsection 36.063(b), notice of a hearing must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d). The substitute deletes language in the original bill allowing the Board by rule to adopt additional notice provisions for a meeting described by Subsection (b) to ensure reasonable notice to and comment from affected stakeholders such as landowners, permit holders, local officials, and other members of the public.

C.S.S.B. 660 removes a requirement in the original bill that a district's management plan include managed available groundwater based on desired future conditions adopted "by rule" under section 36.108, and instead requires the desired future conditions be adopted without a rule requirement.

C.S.S.B. 660 adds language not in the original bill requiring proposed desired future conditions provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. The substitute adds language not in the original bill specifying this requirement does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The substitute makes conforming changes.

C.S.S.B. 660 changes requirements for a district's public comment period from 30 days in the original bill to not less than 30 or more than 90 days.

C.S.S.B. 660 changes language in the original bill to require districts to compile a "summary" of relevant comments received for consideration at the next joint planning meeting, rather than requiring a "district report" of comments received.

C.S.S.B. 660 changes language in the original bill requiring districts to reconvene to review reports and consider district revisions to proposed desired future conditions after the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period under Subsection (d-2) instead of doing so after the districts have submitted their district reports under Subsection (d-2).

C.S.S.B. 660 changes language in the original bill requiring the management area submit to the Board and each district an explanatory report, including proof that notice was posted for the joint planning instead of the adoption meeting.

C.S.S.B. 660 adds the words "if any" after a requirement for the explanatory report to include a list of other desired future condition options considered. These words were not included in the original bill.

C.S.S.B. 660 removes a requirement in the original requiring each district to adopt the applicable desired future conditions by rule, and instead requires each district to adopt applicable desired future conditions.

C.S.S.B. 660 removes language in the original bill providing that a district's adoption of a desired future condition may be appealed in district court in the manner provided under Subchapter H for a challenge to a district rule.

C.S.S.B. 660 adds language not in the original bill allowing the district representatives to elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. The substitute removes a provision in the original bill requiring uniform notice for joint planning meetings. The substitute adds language not in the original bill requiring the secretary of state and the county clerk of each county described by Subsection (e) to post notice of the meeting in the manner provided by Section 551.053, Government Code. The substitute adds language not in the original bill to apply similar notice requirements to both district and joint planning meetings, including requiring notice of a joint meeting to include the date, time, and location of the meeting; a summary of any action proposed to be taken; the name of each district located wholly or partly in the management area; and the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted. The substitute includes language not in the original bill providing that the failure or refusal of one or more districts to post notice for a joint meeting under Subsection (e)(3) does not invalidate an action taken at the joint meeting.

C.S.S.B. 660 adds language not in the original bill clarifying an affected person includes a person who, under Section 36.002, has an ownership interest in groundwater in the management area rather than a person who has groundwater rights in the management area.

C.S.S.B. 660 contains provisions not included in the original providing for an administrative appeal of desired future conditions and defining "Affected person" to have the meaning assigned by Section 36.1082; "Development board" to mean the Texas Water Development Board; and "Office" to mean the State Office of Administrative Hearings.

C.S.S.B. 660 contains provisions not included in the original authorizing an affected person, not later than the 180th day after the date on which a district adopted a desired future condition, to file a petition with the district requesting that the district contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing to appeal the desired future condition, including the reasonableness of the desired future condition.

C.S.S.B. 660 contains provisions not included in the original providing that not later than the 45th day after receiving a request, the district shall contract with the office; request a contested case hearing; and submit a copy of the petition to the office.

C.S.S.B. 660 contains provisions not included in the original requiring the hearing to be held at the district office or regular meeting location of the district's board of directors, unless the board provides for hearings to be held at a different location, and to be conducted in accordance with the Administrative Procedure Act and rules of SOAH.

C.S.S.B. 660 contains provisions not included in the original authorizing the district to adopt rules for notice and hearings conducted under the bill's provisions relating to an administrative appeal of desired future conditions that are consistent with the procedural rules of SOAH. The substitute adds language not in the original bill providing that, in the manner prescribed by district and office rules, the district shall provide general notice of the hearing and individual notice of the hearing to the petitioner, any other party in the hearing in Subsection (f)(3), each nonparty district and regional water planning group in the management area, the development board, and the commission. The substitute includes language not included in the original authorizing only an affected person to participate as a party in the hearing.

C.S.S.B. 660 contains provisions not included in the original requiring the office to hold a prehearing conference to determine preliminary matters including whether the petition should be dismissed for failure to state a claim on which relief can be granted; whether a person is an affected person and eligible to participate as a party in the hearing; and naming parties to the hearing.

C.S.S.B. 660 contains provisions not included in the original requiring the petitioner to pay all costs associated with the contract for the hearing and to deposit with the district an amount sufficient to pay the contract amount before the hearing begins. The substitute also includes

language not included in the original requiring the district, at the conclusion of the hearing, to refund any excess money to the petitioner.

C.S.S.B. 660 contains provisions not included in the original authorizing the administrative law judge to request a study from the development board if the judge finds that a technical analysis is needed related to the hydrogeology of the area or matters within the development board's expertise; requiring the development board, in conducting the technical analysis, to consider any relevant information provided in the petition, as well as any groundwater availability models, published studies, or other information the development board considers relevant; requiring the study to be completed and delivered to the office not later than the 120th day after the date of the request for admission into the evidentiary record for consideration at the hearing; and requiring the development board to make available the relevant staff as expert witnesses during the hearing if requested by any party or the administrative law judge.

C.S.S.B. 660 contains provisions not included in the original requiring the district's board, on receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, to issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. The substitute includes language not included in the original authorizing the board to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an order issued by the administrative law judge in the same manner as a state agency under certain Administrative Procedure Act provisions. The substitute includes language not included in the original requiring the districts in the management area, if the district in its final order finds that a desired future condition is unreasonable, to reconvene in a joint planning meeting not later than the 30th day after the date of the final order to revise the desired future condition.

C.S.S.B. 660 contains provisions not included in the original establishing that a district's final order finding that a desired future condition is unreasonable does not invalidate the desired future condition for a district not subject to the petition.

C.S.S.B. 660 contains provisions not included in the original authorizing a final district order to be appealed under the substantial evidence standard of review as provided by certain provisions of the Administrative Procedure Act; providing that the venue for an appeal is a district court with jurisdiction over any part of the territory in the management area that includes the district whose final order is being appealed; requiring the court, if the court finds that a desired future condition is unreasonable, to strike the desired future condition and order the districts in the management area to reconvene in a joint planning meeting not later than the 30th day after the date of the court's decision to revise the desired future condition.

C.S.S.B. 660 contains a deadline of 60 days, not included in the original bill, for submission of desired future conditions adopted under Section 36.108; proof that notice was posted for the joint planning meeting; and the desired future conditions explanatory report, and makes nonsubstantive changes.

C.S.S.B. 660 makes conforming changes to section references and numbering that differ from such conforming changes in the original bill.